Office-Supreme Court, U.S.
FILED
JAN 30 1965
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 89

AARON E. HENRY,
Petitioner,

vs.

BENFORD C. COLLINS,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF MISSISSIPPI

SEMMES LUCKETT
Clarksdale, Mississippi
LEON PORTER
Clarksdale, Mississippi
C. L. SULLIVAN
Clarksdale, Mississippi
W. O. LUCKETT
Clarksdale, Mississippi
Attorneys for Respondent

E. L. MERIDENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

INDEX

Statement of the Case 2

None of the Rights, Privileges or Immunities Depended Upon for Support Were Specially Set Up or Claimed Except Petitioner's Claim That Negroes Were Systematically Excluded from the Jury Panel 10

Mississippi's Rules of Law Accord with Holding in Times v. Sullivan 12

The Action Was Determined in the State Court As Required by Rules Approved in Times v. Sullivan 14

Negroes Were Not Systematically Excluded from Jury Panel 16

Conclusion 17

Certificate of Service 18

Table of Cases

Edmonds v. *Delta Democrat Publishing Co.*, 230 Miss. 583, 93 So.2d 171 13

Killebrew v. *Jackson City Lines*, 225 Miss. 84, 82 So.2d 648 13

Krebs v. *McNeal*, 222 Miss. 560, 76 So.2d 693 13

Kroger Grocery & Baking Co. v. *Harpole*, 175 Miss. 227, 166 So. 335 13

Louisiana Oil Corporation v. *Renno*, 173 Miss. 609, 157 So. 705 13

New York Times v. *Sullivan*, 11 L. Ed. 686 ..... 1, 10, 11, 12, 14, 16

Railway Co. v. *Brooks*, 69 Miss. 168, 13 So. 847 13

Reliance Mfg. Co. v. *Graham*, 181 Miss. 549, 179 So. 341 13

Scott-Burr Stores Corporation v. *Edgar*, 181 Miss. 486, 177 So. 766 13

Tibbs Tool Co. v. *Hobfield*, 218 Miss. 670, 67 So.2d 609 13

Texts and Statutes

51 A.L.R. 2d 552 14

28 U.S.C., # 1257 (3) 10

IN THE

SUPREME COURT OF THE UNITED STATES

No. 89

AARON E. HENRY,
Petitioner,

vs.

BENFORD C. COLLINS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF MISSISSIPPI

We respectfully submit that the petition should be denied because—

1) The rights, privileges or immunities under the Constitution of the United States which petitioner seeks to have reviewed, with the exception of his claim that Negroes were systematically excluded from the jury panel, were not specially set up or claimed in the state courts.

2) If the right, privilege or immunity not to be subjected to a libel action except under rules which accord with the holding of this court in *New York Times* v. *Sullivan,* 11 L. Ed. 686, was specially set up or claimed in the state court, petitioner was not denied such right, privilege or immunity because (a) Mississippi's rules of law accord with the holding in Times

v. Sullivan, and (b) this action was determined in the state courts as required by rules approved in Times v. Sullivan.

3) Negroes were not systematically excluded from the jury panel.

STATEMENT OF THE CASE

This is a libel action which was brought by respondent against petitioner in the Circuit Court of Coahoma County, Mississippi, on April 25, 1962. In his declaration respondent charged that petitioner, on the 6th day of March, 1962, maliciously prepared, composed and published a libelous letter to Mr. Norwood, Deputy Sheriff of Bolivar County, Mississippi, which contained a malicious libel concerning respondent in his official capacity as Chief of Police of Clarksdale, Coahoma County, Mississippi, and which was thereafter read by the addressee and divers other persons, and that petitioner, also on the 6th day of March, 1962, maliciously prepared, composed and published false, defamatory and libelous statements concerning respondent in his official capacity as Chief of the Police Department of Clarksdale, Coahoma County, Mississippi, by deliberately communicating the same to the United Press International News Bureau, at Jackson, Mississippi, and the Associated Press at Jackson, Mississippi, with the express intent and for the sole purpose that the same be published, republished, communicated and circulated by such news agencies to their subscribers.

Respondent further charged in his declaration that the false, defamatory and libelous statements communicated to such news agencies were communicated and circulated by such news agencies to their subscribers on March 6 and 7, 1962, and actually published in a number of Mississippi

newspapers on March 7, 1962, including the one published in respondent's and petitioner's home town of Clarksdale, Mississippi.

Petitioner, on July 2, 1962, filed his answer to the declaration. In it, he admitted writing the letter to Mr. Norwood but denied that it was false, defamatory or libelous, or maliciously prepared. He denied all averments touching the statements to the news agencies.

Petitioner's answer contained no plea of privilege or fair comment.

With the pleadings as thus described, the action came on for trial on July 19, 1962. Respondent thereupon introduced evidence to the following effect:

On the afternoon of March 3, 1962, a warrant was issued by a Justice of the Peace in Shelby, Bolivar County, Mississippi, for the arrest of petitioner on a disorderly conduct charge (R. 49). It was sent to Clarksdale, Coahoma County, Mississippi, where petitioner resides, for execution (R. 49).

Petitioner was arrested later that afternoon by respondent, pursuant to the directions of the warrant, and taken to the Clarksdale City Jail (R. 118). The Bolivar County authorities were notified of the arrest and requested to send for the prisoner (R. 127).

In the meantime, W. S. Kincade, Mayor of Clarksdale (R. 77), had learned of the calls from Shelby to Clarksdale about the incident and had left word at the police station for respondent to telephone him when he came in (R. 78). Respondent did so (R. 119), and advised Mr. Kincade of petitioner's arrest (R. 78, 119). Mr. Kincade thereupon determined to go to the police station to find out what it was all about (R. 78, 79, 119).

By the time Mr. Kincade arrived at the police station, Eilert, the complaining witness, was there, and so Kincade promptly took Eilert into respondent's office, questioned him, and then directed the respondent to call T. H. Pearson, the County Prosecuting Attorney, to the City Jail for the purpose of interrogating Eilert (R. 79, 90). From the information then available to the Clarksdale Police Department no one knew if such alleged offense had been committed in Bolivar County, or if any had been committed, and it was only determined that such alleged offense had been committed in Bolivar, if any offense had been committed, after the County Prosecuting Attorney completed his interrogation of the principal parties involved (R. 120, 121, 75, 65). (A look at a map will show that Clarksdale and Shelby are but approximately twenty miles apart and that the dividing line between Coahoma County and Bolivar County is nearly equidistant from both towns.)

When Pearson arrived at the city jail, present were respondent, the Chief of Police; Mr. Kincade, the Mayor; Mr. Manuel Nassar, Deputy Marshal of Shelby, Mississippi, and Deputy Sheriff of Bolivar County; another law enforcement officer from Bolivar County not known to Pearson; and Sterling Eilert (R. 65), and Pearson began his investigation by talking with Eilert. After hearing what Eilert had to say, Pearson decided that whatever statements he took should be recorded on his tape recorder, and accordingly he went to his office and obtained his tape recorder (R. 65). He then took statements from Eilert, Clifford Smith, an employee of petitioner, Noelle Henry, the wife of petitioner, and petitioner himself (R. 65, 66). All were recorded on tape (R. 65, 66).

After talking to those above listed, Pearson came to the conclusion that such criminal offense as had been committed, if any had been committed, had not been committed

in Coahoma County (R. 75, 120), and so closed his interview and left the city jail (R. 66). Petitioner was then delivered to the Bolivar County officials (R. 121) and he remained in custody in the Bolivar County Jail until his release the following day (R. 140, 141).

On March 6, two days after his release, petitioner wrote the letter to Mr. Norwood in which he stated that he had filed a complaint with the Department of Justice charging that "the charge under which I was arrested was born in the minds of the County Attorney and the Chief of Police" of Clarksdale, and in which he charged that his arrest was the result of a "diabolical plot" between Pearson and respondent (R. 37, 40). The envelope in which it was mailed shows that it was mailed from Clarksdale on March 7, 1962, at 4:00 P.M. (R. 41).

Also on March 6, petitioner had two telephone conversations with Van H. Savell, of the Associated Press, who had called petitioner to discuss the details of an earlier story about his arrest (R. 84, 85). Petitioner had been out at the time but later returned the call (R. 85). In that conversation petitioner told Savell that he was going to file a complaint with the Department of Justice (R. 85). Around 8:00 o'clock of that evening, petitioner called Savell to tell him he had filed his complaint with the Department of Justice and that he wanted to read it to him (R. 85, 86). He did so twice while Savell was taking notes as to its contents, and then the two had a further discussion (R. 86). Afterwards, Savell devised a message from his notes and wired it to New Orleans where it was rewritten into the story which appeared in the Vicksburg and the Biloxi-Gulfport newspapers (R. 86). In it, petitioner charged that his arrest "was an attempt to discredit him" and "a diabolical plot cooked up" by Pearson and respondent.

Also on March 6, petitioner called the Jackson office of United Press International (R. 90). He wanted to talk to Mr. Herbers, manager of the office, but Herbers was out (R. 90, 91), and so he talked to Mr. Lloyd B. Jeffers, who works under Herbers (R. 90, 91). In their conversation petitioner told Jeffers that he had filed a complaint with the Department of Justice about his arrest and that he had a statement for release (R. 91), and then read the statement to Jeffers (R. 92). Jeffers took it down as he dictated it (R. 92) and then wrote and sent out the story which was published in the Clarksdale, Greenville, Corinth and Meridian newspapers (R. 94, 95). It included a statement which petitioner had made over the telephone to Jeffers that his arrest had resulted from "a diabolical plot cooked up" by Pearson and respondent (R. 95, 96).

The Clarksdale newspaper in which petitioner's statements appeared (R. 102, 103) has a circulation of about 6,000 (R. 104), concentrated mainly in the counties of Coahoma, Quitman, Tunica and Bolivar (R. 104).

Petitioner knew when he called the Associated Press and United Press International that both were engaged in the business of gathering and disseminating news stories (R. 42). In fact, United Press International had carried stories originating with petitioner prior to March 6, 1962 (R. 90). The charge that his arrest was "a diabolical plot cooked up" by the County Prosecuting Attorney of Coahoma County (Thomas H. Pearson) and the Clarksdale Chief of Police (Respondent) was appellant's own words (R. 87, 95, 96). They were quoted from the statement read by petitioner over the telephone (R. 87, 95).

Respondent is a permanent resident of Clarksdale, was thirty-two years of age at the time of the trial, is married, and has one child, a six year old daughter (R. 121). He

has been in law-enforcement work continuously since 1956, and during said period of time has served in the capacity of Deputy Sheriff of Coahoma County, a member of the Mississippi State Highway Patrol, and is presently the Chief of the Clarksdale Police Department (R. 122); it is his sincere desire and intention to make law enforcement his professional career (R. 122, 123).

Respondent's charges are false. No one has framed him. No one has "cooked up" any plot, diabolical or otherwise, to have him arrested on a morals charge (R. 66, 119). Pearson had never seen Eilert prior to the time he came to the city jail to question petitioner (R. 64). Respondent knew nothing about the events in Shelby until the message came over the radio that a warrant had been issued there for his arrest (R. 116, 117). In fact, respondent knew only that petitioner was charged with disorderly conduct when he arrested him (R. 118). The first contact which respondent had with Pearson about the matter was when he called Pearson to come to the city jail pursuant to the directions of Mr. Kincade (R. 119, 120). The first Pearson knew of the affair was gathered from the call to come to the city jail (R. 64, 65). Neither had discussed the matter with the other prior to that time (R. 64, 119).

At the conclusion of respondent's proof, petitioner moved the court for a directed verdict on the grounds, among others:

> That to render a verdict for (respondent) on the testimony and evidence would deny (petitioner) the right of free speech, as guaranteed by the First Amendment of the Constitution of the United States; and
>
> That to render a verdict for (respondent) on the testimony and evidence would deprive (petitioner) of his property contrary to the due process clause of

the Fourteenth Amendment of the Constitution of the United States.

The motion was denied.

Petitioner therefore moved the court for permission to amend his answer in order that these might be incorporated therein. The motion was denied, with the court observing "that the plaintiff has now completed his case and has rested his case".

Petitioner thereupon introduced his evidence. It included his own testimony, on direct examination, that he believed that respondent had mistreated him (R. 143) and that he made the statement for the purpose of "criticizing" the County Prosecuting Attorney and respondent (R. 142).

Although petitioner admitted that he hasn't a shred of evidence that respondent had something to do with his arrest, he maintained from the witness chair that respondent had tried to frame him (R. 148).

The jury found for respondent and fixed his damages at $15,000.00 (R. 174).

Petitioner made a motion in chambers to quash the jury on the alleged ground that Negroes have been systematically excluded from jury service in Coahoma County. Testimony thereon was taken after the conclusion of the trial. Petitioner introduced three members of the five member Board of Supervisors and questioned them on their procedure in making up the jury list for the County. They were Mr. Young, Mr. Wilson, and Mr. Hughes. Each stated, without equivocation, that race did not enter into his consideration when he participated in making up the list (R. 180) (R. 183, 191, 194). In part, Mr. Wilson, whose beat has a small number of qualified electors, testified that he

simply put on the jury list every qualified elector in his district who was without legal or physical disqualification, regardless of his race. Mr. Logan, the Chancery Clerk, testified that the juries were drawn from the box in his presence and that no name was ever returned to the box after it was drawn because it happened to be the name of a Negro (R. 188). Not one scintilla of proof to the contrary was introduced by petitioner.

The motion was denied (R. 221).

Petitioner thereafter moved the court for a new trial on the grounds that the court had erred in refusing to quash the jury panel, that the verdict of the jury deprived him of his right of free speech as secured by the First Amendment to the Constitution of the United States, and that the amount thereof was so grossly excessive as to deprive him of his property contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States (R. 219). The motion was overruled (R. 219, 221).

Petitioner prosecuted an appeal to the Supreme Court of Mississippi from the judgment entered in response to the finding of the jury and in his assignment of errors charged that the trial court erred in overruling his objection to the reading to the jury the dictionary definitions of certain words which appeared in the libel, in overruling his motion for a directed verdict made at the close of respondent's case, in overruling his motion to amend his answer so as to allege the defense of qualified privilege by reason of "fair comment", in overruling his motion for a new trial.

The appeal was set for hearing before the Supreme Court of Mississippi on Monday, October 7, 1963, and was argued before the court on that day.

On December 2, 1963, the judgment of the trial court was affirmed by the Supreme Court of Mississippi. Its opinion appears in 158 So.2d 28.

Petitioner filed a Suggestion of Error with the Supreme Court of Mississippi wherein he suggested, among other things, that the court had erred in its decision of December 2, 1963, by refusing to reduce the size of the verdict, because "actions under the guise of libel which encroach upon freedom of speech and impair rights guaranteed by the Fourteenth Amendment of the United States Constitution must be nullified by an appellate court", and because of its failure to hold that the limitation of prospective jurors to qualified electors is discriminatory and violates the Fourteenth Amendment to the Constitution of the United States.

It was overruled.

NONE OF THE RIGHTS, PRIVILEGES OR IMMUNITIES DEPENDED UPON FOR SUPPORT WERE SPECIALLY SET UP OR CLAIMED EXCEPT PETITIONER'S CLAIM THAT NEGROES WERE SYSTEMATICALLY EXCLUDED FROM THE JURY PANEL.

Jurisdiction to review the judgment of the Supreme Court of Mississippi in this case exists only with respect to a right, privilege or immunity specially set up or claimed by petitioners under the Constitution of the United States. *28 U.S.C., #1257 (3).*

Six reasons have been advanced by petitioner for the issuance of the writ prayed for. Each fails because of the specific provisions of the statute.

Petitioner's first claim is that the judgment is in conflict with the principles enunciated in *New York Times* v. *Sullivan*, 11 L. Ed. 686, wherein this court stated that:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

which means, as we understand the opinion, that in a libel suit brought by a public official because of a statement defaming him with respect to his official conduct, the defense of qualified privilege is available to defendant, and in such a case it is encumbent upon the plaintiff, if defendant interposes the defense of qualified privilege, to prove (a) that the statement was false and (b) that it was published with knowledge of its falsity or with reckless disregard of whether it was false or not.

But petitioner did not claim qualified privilege under the Constitution of the United States. The right, privilege or immunity set up or claimed by him under the Constitution of the United States (done at an improper time and in an improper manner) was that of absolute privilege. His claim was that of absolute immunity from suit by a public official for defamation relating to his official conduct, regardless of the falsity of the defamatory statement and regardless of whether it had been published with "actual malice."

The next reason advanced by petitioner for the issuance of the writ consists of an argument that petitioner's statements were not libelous because petitioner is a Negro engaged in civil rights activities. But the Constitution of the United States does not extend a right, privilege or immunity from libel laws to Negroes engaged in civil rights activities and no such claim was ever specially set up in the state courts.

Petitioner's third reason for the issuance of the writ is essentially a claim of immunity from suit for libel in the state courts of Mississippi. We restrict our response to such claim by pointing to the fact that no such immunity can be found in the Constitution of the United States and that no such claim was ever specially set up in the state courts.

The fourth reason advanced by petitioner for the issuance of the writ consists of a claim that Negroes were systematically excluded from the jury panel. There is no proof to substantiate such a claim.

The next reason advanced for the issuance of the writ is embodied in an assertion that the cumulative effect of the trial court's rulings was to deny petitioner due process and equal protection of the laws. No such claim was ever specially set up in the state courts.

The last reason advanced by petitioner for the issuance of the writ resolves itself into a claim that this is not a private libel action but a state device to suppress criticism of public officials. No such claim was ever specially set up in the state courts and there is not a scintilla of evidence which can be cited in support of such a contention.

MISSISSIPPI'S RULES OF LAW ACCORD WITH HOLDING IN TIMES V. SULLIVAN

The main thrust of petitioner's argument is that the rules which govern actions of libel in Mississippi conflict with the holding of this court in *New York Times* v. *Sullivan*, 11 L. Ed. 2d 686. But petitioner is wrong in his contention. The state's rules are the same as those enunciated by this court in that case.

In Mississippi, criticism of a public or quasi-public official which relate to his public actions, even though they be libelous *per se*, are qualifiedly or conditionally privileged. *Krebs* v. *McNeal*, 222 Miss. 560, 76 So.2d 693, *Edmonds* v. *Delta Democrat Publishing Co.*, 230 Miss. 583, 93 So.2d 171.

In Mississippi, when the defendant in a libel action is entitled to the defense of qualified privilege, *e. g.*, when a public official sues someone for libel on account of libelous statements made about his official conduct,

> The plaintiff has no cause of action if the statements were made in good faith and without malice;
>
> The truth or falsity of the statements is not involved so long as there is no bad faith or malice;
>
> Malice will not be inferred even though the statements are libelous per se;
>
> It will be presumed that the statements were made in good faith;
>
> Malice and bad faith must be proved by plaintiff;
>
> The falsity of the statements must be proved by plaintiff.

See *Railway Co.* v. *Brooks*, 69 Miss. 168, 13 So. 847; *Louisiana Oil Corporation* v. *Renno*, 173 Miss. 609, 157 So. 705; *Kroger Grocery & Baking Co.* v. *Harpole*, 175 Miss. 227, 166 So. 335; *Scott-Burr Stores Corporation* v. *Edgar*, 181 Miss. 486, 177 So. 766; *Reliance Mfg. Co.* v. *Graham*, 181 Miss. 549, 179 So. 341; *Tibbs Tool Co.* v. *Hobfield*, 218 Miss. 670, 67 So.2d 609; *Krebs* v. *McNeal*, 222 Miss. 560, 76 So.2d 693; *Killebrew* v. *Jackson City Lines*, 225 Miss. 84, 82 So.2d 648.

In the very words of this court, Mississippi rules prohibit a public official from recovering damages for a defamatory falsehood relating to his official conduct unless

he proves that the statement was made with "actual malice" —that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

THE ACTION WAS DETERMINED IN THE STATE COURT AS REQUIRED BY RULES APPROVED IN TIMES V. SULLIVAN.

Petitioner apparently labors under two misconceptions of the opinion of the Supreme Court of Mississippi: (1) that the court inferred malice from the fact that his statements are libelous *per se*, and (2) that that court held that truth was his only defense. The state court did not infer malice from the fact that petitioner's statements were libelous *per se*, although it could have done so without offense to what was said in *Sullivan*. Remember that it is the practice of many jurisdictions, including, according to the annotation in *51 A.L.R. 2d*, which begins at page 552, that of Mississippi and the United States, that privilege and fair comment are regarded as affirmative defenses which must ordinarily be specifically pleaded in order to be available, and there was no such defense interposed in this case. True, at the conclusion of respondent's testimony, a motion for a directed verdict grounded on a claim of absolute privilege was interposed, but no one can doubt that it was properly overruled; nor can there be doubt about the propriety of the trial court's refusal to permit the pleading of an affirmative defense after all of the respondent's evidence was in and his case closed. Hence, the case which the Supreme Court of Mississippi had before it was one wherein petitioner had waived whatever rights were available to him under a plea of qualified privilege, to be decided without reference to the particular rules which come into play only when the plea of privilege is available to a defendant and has been interposed.

But as we have said, the state court did not infer malice from the fact that petitioner's statements were libelous *per se*. It held "that malice was actually established in this case." And it is apparent from the quoted definition of malice which followed that statement that it did so on the basis of proof which showed that the statements were false and that petitioner made the outrageous charges without a scintilla of evidence on which to base them. It showed further that petitioner was prompted to make the statements because respondent had presumed to do his duty on those occasions when petitioner had fallen afoul of the law; as if he was above the law and not subject to prosecution. It discloses an unwillingness to disavow his calumnies, even though he has nothing with which to support them. In short, the proof not only showed that petitioner defamed respondent recklessly without knowing or caring whether his charges were true, but it also showed that he did so out of spite and ill will and with a considered intention to injure respondent.

Truth was not petitioner's only defense to the action. Every defense available to a defendant in a Mississippi libel action who has the right of recourse to a plea of qualified privilege, was available to petitioner in this case. Specifically, he was entitled to the rules which declare that there was no cause of action against him if his statements were made in good faith and without malice, that malice could not be inferred from the publication of the statements, even though they were libelous *per se*, that the court should presume that the statements were made by him in good faith, that respondent had the burden of proving malice, and that respondent had the burden of proving the falsity of the statements. The question of the truth or falsity of the statements would not have entered the case without proof by respondent that petitioner was actuated by bad faith and malice, as to which respondent had the burden of proof.

The fact of the matter is that the case was tried as if petitioner had interposed a plea of qualified privilege. Respondent charged in his declaration that petitioner's statements were published maliciously and in bad faith, and that they were false. Respondent assumed the burden of proving such malice, bad faith and falsity. He met that burden with competent proof, much of it from petitioner himself. There was no substantial evidence in contradiction thereof.

With malice, bad faith and falsity established by proof without substantial contradiction, any defense of qualified privilege was negated. Such would have been the result in any jurisdiction. The same result follows from what was said in *New York Times* v. *Sullivan*.

NEGROES WERE NOT SYSTEMATICALLY EXCLUDED FROM JURY PANEL

There is no dispute about the fact that the systematic exclusion of Negroes from jury panels denies to a Negro defendant the equal protection of the laws guaranteed to him by the Fourteenth Amendment. But no one can seriously contend that a motion based on such proposition is self-proving, and does not require evidence to sustain it.

We have already pointed out that the proof on the motion was exactly contrary to its allegations.

Petitioner cites population figures, but this court knows that no one is qualified to be chosen a juror simply because he lives in the county. He also refers to figures which he claims are registration figures—but which are erroneous, including, as they do, everyone who has registered in Coahoma County since 1949, whether now deceased or now living elsewhere—but this court also knows that no

one is qualified to be chosen as a juror simply because he or she is registered.

Finally, we have petitioner's ipse dixits to the effect that Negroes are disenfranchised in Coahoma County through threats, intimidation, and lack of official cooperation. Of course, he made no effort to substantiate these charges. The reason is clear enough to anyone who knows the facts of the matter. It happens to be a fact that Negroes are not disenfranchised in Coahoma County because of their race.

Since there is no proof in the record on which to base even an argument that Negroes have been systematically excluded from juries in Coahoma County, petitioner's argument to that effect falls of its own weight.

CONCLUSION

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this court, and that the petition for writ of certiorari should be denied.

Dated January ....., 1965.

SEMMES LUCKETT
Clarksdale, Mississippi
LEON L. PORTER
Clarksdale, Mississippi
C. L. SULLIVAN
Clarksdale, Mississippi
W. O. LUCKETT
Clarksdale, Mississippi

CERTIFICATE OF SERVICE

I certify that a copy of the above brief was mailed to each of counsel for petitioner, at his usual address, postage prepaid, on January ....., 1965.

.....

SEMMES LUCKETT

Attorney for Respondent